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Religion, Hate Speech, and Non-Domination

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Abstract

In this paper I argue that one way of explaining what is wrong with hate speech is by critically assessing what kind of freedom free speech involves and, relatedly, what kind of freedom hate speech undermines. More specifically, I argue that the main arguments for freedom of speech (e.g. from truth, from autonomy, and from democracy) rely on a “positive” conception of freedom intended as autonomy and self-mastery (Berlin, 2006), and can only partially help us to understand what is wrong with hate speech. In order to fully grasp the wrongness of hate speech and to justify hate speech legislation, I claim, we need to rely instead on the republican idea of freedom as “non-domination” (Pettit, 1997, 2012, 2014; Laborde, 2008). I conclude that the hate speech used by religious citizens, even though it is a manifestation of their religious freedom, should be subject to the same restrictions that also apply to other citizens' speech, because republicans should be concerned with the undominated (i.e. robustly secured) religious freedom of all religious citizens and, more generally, with the undominated freedoms of all citizens, including those who are victims of religious hate speech.

Keywords

Free speech, Hate speech, Religion, Non-domination, Republicanism

Introduction

The relationship between religion and hate speech is complex. On the one hand, it has been central to recent discussions of hate speech directed at religious people, especially members of religious minorities. On the other hand, religious believers sometimes defend their use of derogatory and extreme speech against members of other religious faiths, or people with a certain sexual orientation, as part of their religious freedom. Recent examples include Swedish pastor Aaka Green's likening of homosexuals with "cancer" (Anon. 2005); Tunisian preacher Muhammad Hammami's anti-semitic remarks (Anon. 2012); and Belfast Pastor James McConnell's description of Islam as "heathen" and "Satanic" (Anon. 2014). This renders an examination of the relationship between hate speech and religion especially important.

Hate speech legislation currently in place across Europe and beyond is diverse, and underlied by a broad variety of legal rationales. Hate speech has been banned, for example, based on the view that it amounts to group defamation; that it involves negative stereotyping or stigmatisation of vulnerable minorities; that it incites hatred, or endangers public order; that it undermines the dignity of its victims, by humiliating or degrading them; that it infringes human rights, e.g. rights against discrimination and/or harassment; and that the mere expression of hatred is inherently wrong, regardless of its effects (Brown 2015). Similarly, the moral arguments in favour of hate speech laws are also diverse, and include the view that hate speech offends its victims; that it violates their dignity or autonomy; that it has negative effects on their health; that it hinders their personal development; or that it jeopardizes cultural diversity or democracy (Brown 2015).

In this paper, I do not intend to provide an overall assessment of these arguments. My goal, instead, is to show that we can also explain what is wrong with hate speech by critically assessing what kind of freedom free speech involves and, relatedly, what kind of freedom

hate speech undermines. More specifically, I will argue that the main arguments for freedom of speech (e.g. from truth, from autonomy, and from democracy) rely on a “positive” conception of freedom intended as autonomy and self-mastery (Berlin, 2006), and can only partially help us to understand what is wrong with hate speech. In order to fully grasp the wrongness of hate speech and to justify hate speech legislation, I will claim, we need to rely instead on the republican idea of freedom as “non-domination” (Pettit, 1997, 2012, 2014; Laborde, 2008). I will conclude that the hate speech used by religious citizens, even though it is a manifestation of their religious freedom, should be subject to the same restrictions that also apply to other citizens’ speech, because republicans should be concerned with the undominated (i.e. robustly secured) religious freedom of all religious citizens and, more generally, with the undominated freedoms of all citizens, including those who are victims of religious hate speech.

Freedom of speech and positive freedom

Existing arguments for freedom of speech are ultimately grounded in a “positive” conception of freedom, i.e. freedom intended as individual autonomy and self-mastery, or freedom as collective self-government. This focus on positive freedom, I argue in this section, can only partially help us to understand what is wrong with hate speech.

i. Free speech, truth, and the marketplace of ideas

John Stuart Mill’s view that the absence of state censorship will enable the truth to emerge, thanks to the free exchange of ideas, remains one of the most accomplished and influential arguments in defence of free speech (Mill 2006). While freedom of speech, in Mill’s account, is undoubtedly a negative freedom, Mill’s rationale for it can be traced back to a positive conception of freedom. Indeed, by contributing to the discovery of truth, freedom of speech

also contributes “to the mental well-being of mankind (on which all their other well-being depends)” (Mill, 2006: 60). “The truth of an opinion,” Mill argues, “is part of its utility” (Mill, 2006: 29), and the latter should be considered as “the ultimate appeal on all ethical questions; but it must be utility in the largest sense, grounded on the permanent interests of man as a progressive being” (Mill, 2006: 17).

The truth that freedom of speech enables people to discover contributes to utility both for society in general and for its individual members. Indeed, it is important to remember that for Mill the pursuit and discovery of truth should be accompanied by the use of our deliberative faculties. As Ten (1980) points out, while the “avoidance of mistake” could also be achieved without freedom of speech, i.e. through the government indoctrination of an uncritical people, it is the need to avoid the “assumption of infallibility” that most strongly justifies the need for free speech in Mill’s theory, demands the use of citizens’ deliberative faculties, and thus contributes to their flourishing as autonomous, rational and self-determining (i.e. positively free) individuals.

Mill does impose some constraints on free speech when the latter becomes a clear incitement to violence, as his famous example of the mob outside the corn dealer’s house shows (Mill, 2006: 64). This reflects Mill’s view that state interference with an individual’s freedom is permissible only when an action causes actual harm to others or when “there is...a definite risk of damage, either to an individual or to the public” (Mill, 2006: 93). The harm principle, therefore, can help us to understand what is wrong with incitement to hatred, as the latter may lead to violence, discrimination and injustice (Brown, 2008). However, not all hate speech is incitement to hatred. Instances of hate speech such as cross burning or displays of Nazi swastikas, for example, do not always involve the kind of harm (actual, imminent or likely) that for Mill would warrant state intervention. Mill’s harm principle, therefore, cannot help us to capture what is wrong with these instances of hate speech.

But neither can Mill's truth-based defence of free speech, and the ideal of positive freedom that underlies it, help us to fully understand what is wrong with hate speech. That ideal might justify regulating *some* categories of hate speech, i.e. those which are instances of "low-value" speech and do not engage our cognitive and deliberative faculties (Brink, 2008), e.g. "fighting words" which provoke an immediate, unreflective and often violent reaction from the hearer. Yet many forms of hate speech do contribute to the use of our intellectual faculties, and in this sense are instances of "high-value" speech (Brink, 2008). Think, for example, of cases of group defamation, which may contain statements of fact (e.g. "all Muslims are terrorists") which, while false, can generate public debate and reflection on important social and political issues.

It is true that, in many cases, these instances of "high-value" hate speech may still warrant state regulation, because they prevent their victims from participating in, and contributing to, the pursuit and discovery of truth. For example, the University of Michigan Discrimination and Harassment Policy, like many other university campus codes, allows the regulation of discriminatory harassment targeting individuals because of their religious beliefs, that "has the purpose or effect of unreasonably interfering with an individual's employment or educational performance or creating an intimidating, hostile, offensive, or abusive environment for that individual's employment, education, living environment, or participation in a University activity" (University of Michigan, 1992). This and similar instances of discriminatory harassment may contain valuable speech that could contribute to the discovery of truth (Brown, 2015: 114), and yet warrant restrictions if overall they impinge on (rather than contribute to) that goal. However, it is unclear how such truth-based restrictions can be justified by appealing to the idea of positive liberty, if those working and studying on university campuses have their right to participate in university activities (and, therefore, in the discovery of truth) formally protected. Or, to be more precise, the positive

freedom of the victims of hate speech will certainly be undermined if they are unable to fully exercise their formal rights to participate in various university activities (as that participation is what enables them to employ their deliberative faculties and contribute to the positive freedom-enhancing pursuit and discovery of truth), but only *indirectly*. What is *directly* affected by hate speech, however, is the victims' ability to enjoy those formal rights (on which their positive freedom depends) securely and this, I will argue, requires appealing to the republican idea of freedom as non-domination.

ii. Free speech, individual autonomy, and self-fulfilment

The second major argument for free speech relies more directly than Mill's on the idea of positive freedom. The claim, in this case, is that "[r]estrictions on what we are allowed to say and write, or (on some formulations of the theory) to hear and read, inhibit our personality and its growth. A right to express beliefs and political attitudes instantiates or reflects what it is to be human" (Barendt, 2005: 13). Some versions of the argument focus on the right of speakers as autonomous beings, e.g. what Ronald Dworkin calls the "right to moral independence" (Dworkin, 1981). Other versions of the argument, however, place more emphasis on the right of audiences. The most famous example is perhaps Thomas Scanlon's view that "the powers of a state are limited to those that citizens could recognize while still regarding themselves as equal, autonomous, rational agents" (Scanlon, 1972: 215), and that "[a]n autonomous person cannot accept without independent consideration the judgment of others as to what he should believe or what he should do" (Scanlon, 1972: 216). Scanlon places a great emphasis on individual autonomy, and particularly on the view that "[a] person who acts on reasons he has acquired from another's act of expression acts on what *he* has come to believe and has judged to be a sufficient basis for action. The contribution to the genesis of his action made by the act of expression is, so to speak, superseded by the agent's

own judgment” (Scanlon, 1972: 212, original emphasis). Preventing hearers from being exposed to the speech of others just because their acting under the influence of that speech may lead to self-harm or harm to others would therefore constitute a serious infringement on the hearers’ autonomy.

At first glance, the argument from autonomy and self-development seems to fail to provide any rationale for restricting hate speech directed at members of religious or ethnic minorities. Indeed restricting hate speech would not only curb the autonomy of speakers but also that of hearers, by implying that the latter (at least when they are adult and rational) are not capable of judging and critically assessing whatever hateful messages they are exposed to. One might argue, however, that hate speech which advocates or incites discrimination will undermine the autonomy and self-development of its victims, if such policies are eventually implemented (Yong, 2011: 398). Yet this argument relies on uncertain empirical foundations, i.e. it cannot be certain that hate speech will inevitably lead to the implementation of such policies. Moreover, in order to minimize the risk that such policies may successfully be implemented, it might be possible to put in place institutional and constitutional protections which would render their implementation highly unlikely.

There is, however, a further objection to the view that the argument from autonomy is not consistent with any hate speech legislation. Some hate speech, that is, may permissibly be regulated because it “exercise[s]...undue influence on the listener” (Brown, 2015: 60), thus preventing them from autonomously deciding what to believe and how to act (Brown, 2015: 60). This is consistent with Scanlon’s own revised version of the argument from autonomy, according to which autonomy “might sometimes be better advanced if we could shield ourselves from some influences” (Scanlon, 1979: 534), such as subliminal advertising (and, by extension, some forms of hate speech).

For example, when Jamaican-born Muslim cleric Abdullah el-Faisal was convicted of stirring up racial hatred due to his repeated claims about Jews, Hindus and Christians, Judge Beaumont made the following statement:

In my judgment, your offending was aggravated by the fact that as a cleric you were sent to this country to preach and minister to the Muslim community in London, and so had a responsibility to the young and impressionable within that community at times of conflict abroad and understandable tensions in the communities here over the period which is spanned by the indictment (*R. v. El-Faisal* 2003, quoted in Brown, 2015: 65).

While this statement suggests that at least some forms of hate speech may undermine the autonomous thinking and decision-making of at least some kinds of audiences, it is not clear that Judge Beaumont's conclusions also apply to those who are not "young and impressionable." Arguing that all categories of hate speech exercise an undue influence upon all audiences, that is, would de facto undermine the argument from autonomy entirely, i.e. by denying that any adult persons are capable of autonomously reflecting upon the hateful messages they are exposed to, and it would justify an extensive range of censorship measures in the realm of free speech. This is not a position that can be endorsed consistently with the argument from autonomy. Like the argument from truth, therefore, the argument from autonomy and self-development, which is grounded in a positive conception of freedom, only offers a partial justification for hate speech legislation.

iii. Free speech and democracy

When considering the argument from democracy, we move from a positive conception of freedom of speech focused on *individual* self-mastery to one which emphasizes instead the

idea of *collective* self-government. This is the theory defended, among others, by Alexander Meiklejohn (1961, 1979), for whom freedom of speech contributes to citizens' understanding of political matters, which is necessary for their collective self-government. The latter, Meiklejohn argues, "can exist only insofar as the voters acquire the intelligence, integrity, sensitivity, and generous devotion to the general welfare that, in theory, casting a ballot is assumed to express" (Meiklejohn, 1961: 255), and all of this requires the free circulation of ideas in the public sphere. The argument from democracy seems to demand that we reject restrictions on hate speech, especially when such speech presents politically relevant content (and much hate speech is, directly or indirectly, related to some political message).

However, there might be two grounds, based on the argument from democracy, for regulating hate speech. On the one hand, one might embrace the idea of "militant democracy" and argue that hate speech should be regulated because it "is highly likely to destroy democracy" (Yong, 2011: 399). As in the case of the argument from individual autonomy, though, also in this case this kind of conclusion must rely on uncertain empirical foundations, i.e. the view that democracy will (or is very likely to) be undermined by hate speech. Yet the fact that democracy is still in place, for example, in the United States, despite the fact that hate speech is mostly unregulated in that country, suggests that this conclusion is empirically controversial. Moreover, as in the case of the argument from individual autonomy, in order to protect democracy we could enhance the constitutional and institutional protections that would render the implementation of anti-democratic policies very difficult (if not impossible), rather than silence the hate speech that advocates those policies.

There is, however, a second sense in which democracy may be undermined by hate speech. Hate speech, that is, may have a "silencing effect" (Brown, 2015: 198) on its victims (e.g. members of religious or ethnic minorities), due to "fear for their personal safety or livelihood or as a result of an impaired sense of their status" (Brown, 2015: 198), thus de

facto excluding them from democratic deliberation and failing to treat them as free and equal participants in collective democratic self-government. As in the aforementioned case of discriminatory harassment in connection with the argument from truth, however, it is not the positive freedom of the victims of hate speech that justifies these restrictions, if such victims still preserve their formal rights to participate in public deliberation and collective self-government. Or, to be more precise, the positive freedom of the victims of hate speech will certainly be undermined if they are practically unable to exercise their formal rights to contribute to democratic deliberation (as that contribution is crucial to their participation in collective self-government, which is a form of positive freedom), but only *indirectly*. What is *directly* affected by hate speech, however, is the victims' ability to enjoy those formal rights (on which their positive freedom depends) securely and this, I will argue, requires appealing to the republican idea of freedom as non-domination.

Free speech and non-domination

In the previous section, I argued that the idea of positive freedom that underlies the three main arguments for free speech can only partially or indirectly justify restrictions on hate speech. What conception of freedom, then, can help us to understand more fully what is wrong with hate speech? The answer to this question can be found by appealing to the republican idea of freedom as non-domination. In republican political theory, freedom as non-domination refers neither to the absence of actual (or imminent) interference ("negative" freedom), nor to autonomy and self-mastery ("positive" freedom), but to the absence of "arbitrary" (Pettit, 1997) or "uncontrolled" (Pettit, 2012) interference or mastery by others. While being ultimately a negative kind of freedom, freedom as non-domination differs from mere negative freedom as it puts emphasis on those structural factors (institutional, legal, and social) which render one's exercise of negative freedom (however broad the latter might be)

insecure and interference by others (the state, other people, etc.) unpredictable, capricious and unrestrained (even if such interference never actually materializes).

In one of his more recent works Pettit defines “uncontrolled” interference as “interference that is exercised at the will or discretion of the interferer; interference that is uncontrolled by the person on the receiving end” (Pettit, 2012: 58). The advantage of using the term “uncontrolled” rather than “arbitrary,” Pettit argues, is that even in the presence of recognized non-arbitrary rules, “interference that conforms to rules, and is not arbitrary in that sense, may still be uncontrolled by you and can count as arbitrary in our sense” (Pettit, 2012: 58). Furthermore, he claims, “uncontrolled” involves a more objective and descriptive meaning than “arbitrary,” “and people can agree on when it applies and when it does not apply, independently of differences in the values they espouse; it is not a value-dependent or moralized term” (Pettit, 2012: 58). The idea that both of Pettit’s formulations of “non-domination” involve (despite the other differences between them), and which is crucial to the present analysis, is the view that freedom in the republican sense requires “security in the exercise of your basic liberties” (Pettit, 2014: 77). This security, according to Pettit, guarantees that “the members of a contemporary society are to enjoy the status or dignity of the free republican citizen” (Pettit, 2014: 61).

The implications of the republican idea of freedom as non-domination for freedom of speech, and for hate speech more specifically, have been surprisingly overlooked (for an exception, see Power Febres, 2010). Yet the idea of non-domination can help us to understand more fully (i.e. than the idea of positive freedom) what is wrong with hate speech. More specifically, it can help us to understand that hate speech is wrong and should be regulated because even in the presence of legal and institutional protections against violence and discrimination, its victims do not enjoy their rights and liberties in a secure way. As a result, members of religious or ethnic minorities cannot live and act without fear that at some

point those who hate them might target them or even aim to deprive them of those very protections (i.e. basic rights and liberties) that guarantee some level of security for them. Even if these outcomes never materialize, the fear will still be there.

The wrongness of some of the examples of hate speech examined in the previous section, we saw, could only partially or indirectly explained by appealing to the idea of positive freedom. Instances of hate speech such as cross burning, the displays of Nazi swastikas, and discriminatory harassment on university campuses, for example, only indirectly undermine their victims' positive freedom. What they do undermine directly, however, is their victims' freedom as non-domination, i.e. their ability to enjoy their rights and liberties (which enable them to be positively free) with security, in a non-dominated way. This is what, more fundamentally, renders these and many other instances of hate speech wrong, and thus justifies their regulation.

It is interesting to note that the idea of freedom as non-domination implicitly underlies Jeremy Waldron's (2012) influential defence of hate speech laws, even though Waldron himself never refers to republican political theory in his argument. According to Waldron, hate speech undermines the public good of "assurance" which guarantees that "each person, each member of each group, should be able to go about his or her business, with the assurance that there will be no need to face hostility, violence, discrimination, or exclusion by others" (Waldron, 2012: 4). This "assurance", Waldron argues, is especially important "for the members of vulnerable minorities, minorities who in the recent past have been hated or despised by others within the society, [and for whom] the assurance offers a confirmation of their membership: they, too, are members of society in good standing" (Waldron, 2012: 5). Hate speech, Waldron claims, undermines this assurance by reminding its victims that they should "[b]e afraid" (Waldron, 2012: 2). Like Pettit, Waldron links assurance and security with the idea of civic dignity, and argues that the assurance undermined by hate speech

guarantees citizens' "social standing, the fundamentals of basic reputation that entitle them to be treated as equals in the ordinary operations of society. Their dignity is something they can rely on" (Waldron, 2012: 5).

Grounding the justification for hate speech restrictions in the idea of freedom as non-domination, it should be noted, does not imply that hate speech restrictions privilege hearers over speakers. This is not, in other words, a conflict between the freedom of speech of speakers, on the one hand, and the freedom as non-domination in general (i.e. not specifically concerning free speech) of hearers, on the other hand. Instead, each individual should be seen as *both* a speaker *and* a hearer, and *freedom of speech as non-domination* should be seen as the ability to speak without feeling vulnerable and insecure in one's enjoyment of basic rights and liberties. Therefore those victims of hate speech who, due to the insecurity they experience, feel silenced and unable to express their views, are not simply experiencing non-domination due to the freedom of speech of others. *They themselves* are lacking freedom of speech as non-domination. As Cass Sunstein points out, "[hate speech] create[s] fears of physical violence, exclusion, and subordination [...] People confronted by hate speech may experience a form of 'silencing' in the sense that they are reluctant to speak" (Sunstein, 1993: 186). It is important to stress again that the idea of positive freedom cannot fully capture what is at stake here. Unless speakers who are victims of hate speech have been formally deprived of their rights, they still enjoy the ability to autonomously make up their mind about what to believe and how to act in response to hate speech, and to participate in public debate accordingly. What they no longer enjoy, however, is the right to do all of this in a secure and non-dominated way, i.e. without the fear that they might at some point be deprived of their rights and liberties.

In this sense it is true, as Eric Barendt points out, that hate speech "does not inhibit their [i.e. the victims'] legal freedom to communicate their views, in particular their right to

reply to racist abuse” (Barendt, 2005: 174). Yet this is beside the point. Even if one never experiences any legal interference with their speech, the threat represented by uncontrolled or arbitrary interference is sufficient to consider oneself dominated, i.e. insecure in one’s enjoyment of freedom of speech (and of other rights and liberties). Similarly, the fact that hate speech laws do restrict the negative freedom of speech of speakers is irrelevant to the question whether such restrictions are dominating. Hate speech legislation is certainly an instance of state coercive interference with negative freedom. Yet, like any other instance of state interference, it is not dominating “so long as it can be subjected to the effective, equally shared control of the people” (Pettit, 2014: 111).

This reconstruction of freedom of speech as non-domination, and of its implications for hate speech, finds support in Pettit’s (1994) only dedicated analysis of free speech. The lynchpin of Pettit’s argument is that on the basis of a republican conception of freedom, free speech is protected not simply by limiting interference (e.g. by the state or other people) but also by securing “robust or resilient non-interference” (Pettit, 1994: 46), and that this can only be achieved if “a person is recognized by the law and the supporting culture as subject to protection” (Pettit, 1994: 47). The emphasis, that is, is on both legal rights and social norms.

Importantly for the present analysis, Pettit claims that the legal right to free speech is not absolute and that it “may be limited to certain domains or may be conditional on certain provisos” (Pettit, 1994: 47). This view can also be found in Pettit’s more recent work (e.g. Pettit, 2014: 70). While Pettit does not elaborate on this point, this at least suggests that he is not a defender of free speech absolutism. This is not surprising. Freedom as non-domination, while being ultimately a kind of negative freedom, is different from mere negative freedom and it is compatible with forms of state interference, as long as these are not arbitrary or uncontrolled, and “provided that the limits and conditions [i.e. in the case of restrictions on free speech] are clear in advance to speakers” (Pettit, 1994: 47). In summary, limits on free

speech are justified when they secure freedom of speech as non-domination. Particular speech acts, including hate speech acts, may be limited in order to secure a republican framework in which everyone's free speech is robustly protected. Republicanism therefore offers a theoretical and normative framework that helps us both to fully understand the wrongness of hate speech and to avoid the usual tension between the rights of speakers and those of hearers, by appealing to the importance of guaranteeing *a robust freedom of speech for all*.

Laborde, critical republicanism and hate speech

One important objection might be raised at this point against the argument defended in the previous section. As in the case of accounts of free speech grounded in a positive conception of freedom, it could be argued that the stronger the legal and institutional protections against violence and discrimination are, the weaker the infringement on the non-domination of members of religious or ethnic minorities resulting from hate speech is likely to be. Hate speech, in this sense, is innocuous as long as its victims are protected by criminal laws against the harm it threatens (e.g. Brown, 2008: 18).

Yet this conclusion overlooks a key aspect of republicanism. This is the view that laws and institutions are not sufficient to guarantee non-domination if they are not backed by supportive social norms which contribute to people's compliance with them. According to Pettit, "[t]he social norms that support laws, doubling the objective and subjective security that the laws underwrite, consist by most accounts in patterns of behaviour that people expect to be approved of for displaying and disapproved of for not displaying" (Pettit, 2014: 59). Cécile Laborde also highlights the importance of social norms, by stressing that republicans, unlike liberals, believe "that social attitudes and citizens' ethos are as important as just institutions and laws in creating and sustaining the ideal society" (Laborde, 2008: 10).

Most importantly, the relationship between laws and social norms should be seen as “reciprocal” (Pettit, 2014: 59). This does not imply that social norms will definitely be internalized by all individuals since “people may or may not actually approve or disapprove on the pattern that others expect them to follow” (Pettit, 2014: 216, note 33). Yet what it does imply is that “the community will police potential offenders into compliance with the law by exposing each to the prospect of disapproval – and to the cost associated with disapproval – in the event they do not comply” (Pettit, 2014: 60). Social norms, in other words, provide “incentives” for people to act in certain ways qua rational agents.

On these grounds, it might therefore be argued that permitting hate speech is not consistent with the aim of guaranteeing citizens’ non-domination as it allows the growth of social norms which are unsupportive of legislation against violence and discrimination, and which therefore prevent the robust enjoyment of rights and liberties (including freedom of speech) by members of religious or ethnic minorities who are the targets of hate speech. One might still point out, however, that the same problem might apply to hate speech legislation. We can implement hate speech legislation, that is, but that might still not guarantee the secure enjoyment of rights and liberties (including freedom of speech) by members of religious or ethnic minorities who are the targets of hate speech. This is because racists and fascists, and anyone else who engages in hate speech, might still endeavour to engage in it whenever they can get away with that (i.e. even in the presence of hate speech laws). In other words, the problem has just been moved one step backwards.

In response to this, one might stress again that laws can contribute to the widespread endorsement of corresponding social norms, and that hate speech legislation might just have such an effect. However, if that is the case, then this would also apply to laws against discrimination and violence. The widespread endorsement of the social norms supporting such laws, that is, would guarantee the security and non-domination of members of religious

or ethnic minorities by acting as an incentive for people not to commit violent and discriminatory acts against members of religious or ethnic minorities, even in the presence of unconstrained freedom of speech which allows hate speech. In this sense, hate speech would cease to present a threat to its victims' non-domination, since the latter would be already secured by laws against violence and discrimination and by the corresponding widespread social norms. How can we exit, then, this apparent paradox? The foregoing analysis seems to imply that from a republican perspective, which considers both laws and social norms as necessary in order to guarantee the security and non-domination of individual citizens, either hate speech is innocuous or hate speech legislation is ineffective.

The solution to this apparent conundrum can be found in Laborde's (2008) claim that the realization of the republican ideal of non-domination requires the acknowledgment "that the historical ethnicization of the public sphere...still weighs heavily on the present, and creates often intangible obstacles to the fair incorporation of minorities" (Laborde, 2008: 233). This therefore requires "the de-ethnicization of the actually existing civil sphere and the de-stigmatization of the traits associated with minority groups" (Laborde, 2008: 233). On the basis of this claim, Laborde highlights the importance of a contextualist approach. For example, she claims, "[w]hile colour-blindness might be the ideal morality for an ideal society, it is not necessarily the appropriate response to racial discrimination in existing colour-coded societies. Thus, colour-conscious policies might well be the best way to de-racialize society in the long term" (Laborde, 2008: 235).

But similarly, while unconstrained freedom of speech might be the ideal option for an ideal republican society (in which there are laws against violence and discrimination supported by widespread social norms), the same might not be the case in those societies in which the public culture is strongly ethnicized, and in which this ethnicization prevents laws against violence and discrimination from being fully supported by widespread social norms,

especially with regard to members of religious or ethnic minorities. Hate speech, in this sense, may contribute in placing members of religious or ethnic minorities under an extra level of domination. This may be reflected not only in their fear that some of their fellow citizens may violate or remove laws that protect their rights and liberties when they can get away with it but also, for example, in their lack of trust in those who have the task to enforce those legal protections (e.g. the police, the judiciary, etc.).

Hate speech laws can therefore be considered measures through which the public sphere can gradually be de-ethnicized and cleared of the dominating features that especially affect members of religious or ethnic minorities. Hate speech legislation should be seen as a symbolic measure which offers extra reassurance to vulnerable minorities, thus compensating for the extra level of domination of which they are victims, and which can contribute to the development of de-ethnicized social norms and a de-ethnicized public sphere. Under these new conditions, laws against violence and discrimination, and the corresponding social norms, may gradually become sufficient for members of religious or ethnic minorities to enjoy a robust freedom (including freedom of speech) as non-domination.

In this sense, it could be argued that hate speech laws, under a republican framework, should be intended as temporary rather than permanent measures. Their aim, that is, is to “purify” the public sphere of those ethnicized social norms that, if untouched, would prevent members of religious or ethnic minorities from effectively using whichever tools of empowerment and voice the republican state provides them with. Alexander Brown, for example, makes a similar claim when he argues that “incitement to hatred legislation is best characterised as *transitional*. That is, it is most suitable for societies that need to promote better treatment across the board of racial and religious groups” (Brown, 2008: 18).

Yet the idea of temporary or transitional hate speech laws is not entirely persuasive. It is not clear whether we can and should consider the ethnicized public sphere of contemporary

multicultural societies as a transient feature that may gradually vanish thanks to the implementation of temporary hate speech laws (and other similar measures). This conclusion seems to presuppose a somehow teleological and highly idealistic view which does not reflect in full the contextualist character of republican political theory. In other words, given the ever-changing diversity of contemporary societies, it is unlikely that at any point there will no longer be any vulnerable minorities whose secure enjoyment of basic rights and liberties is threatened by hate speech. While long-standing minorities may gradually see their non-domination reinforced and secured, new minorities will emerge, as a result of migratory fluxes, internal fragmentation of existing minorities (or majorities), and demographic changes. This complex situation implies, on the basis of a republican theory of free speech, that hate speech laws should not be temporary but permanent.

Laborde's critical republicanism also offers another reason in support of hate speech laws, even in the presence of laws against violence and discrimination that are backed by widespread social norms. According to Laborde, there are "forms of domination which, being the product of indoctrination, manipulation, and norm internalization, remain invisible to their victims" (Laborde, 2008: 23). This aspect, she claims, is not fully captured by Pettit's republicanism, for which there is domination only if there is "common knowledge among the people involved, and among any others who are party to their relationship" (Pettit, 1997: 59) (i.e. if people are generally aware) that someone has the ability to arbitrarily interfere with one's choices. According to Laborde, this leads Pettit to overlook, or at least underestimate, cases of "backroom manipulation" (Pettit, 1997: 60), where "domination may affect a person's interests even though she might be unaware of it, as in the well-known examples of the submissive housewife or the contented slave" (Laborde, 2008: 153).

According to Laborde, manipulative non-domination prevents individuals from developing (and not merely from employing) their "capacity for minimal autonomy"

(Laborde 2008: 153), i.e. the “minimum discursive control or ‘voice’...[that allows them to] contest the power that is exercised over them” (Laborde, 2008: 152). When we are dominated, Laborde argues, “we are either deprived of the ability to form our own perspective (we are indoctrinated, manipulated, socialized into submissive roles) or, if we possess the capacity, we are prevented from using it (we are silenced, humiliated, threatened)” (Laborde 2008, pp. 153-4). In other words, “a capacity can be *denied* and not only *dismissed* through domination” (Laborde, 2008: 154, original emphasis). Pettit’s republicanism, Laborde claims, only captures the latter kind of domination.

Laborde’s analysis therefore helps us to understand another important way in which hate speech can be dominating, in addition to the kind of domination that Pettit’s republicanism helped us to unveil. Hate speech, that is, may prevent its victims from even developing an awareness of the domination to which they are subject, and the capacity to contest it. This may happen, for example, when victims of hate speech internalize the hatred directed at them and display forms of self-hatred, as in the case of some Jews (Gilman 1990; Reitter 2012) or African Americans (Clark and Clark 1947). By manipulating and socializing its victims into submissive roles, hate speech may prevent them from making use of laws which protect them from discrimination or violence, even when such laws are also backed by widespread supporting social norms. This is the case, for example, of many women in western societies, who may be dominated (e.g. as a result of widespread patriarchal norms) despite the presence of socially endorsed laws against gender discrimination. The same could be argued about many victims of hate speech, including members of religious minorities.

Hate speech, religious freedom, and non-domination

My analysis throughout this paper has focused on hate speech directed at members of either religious or ethnic groups, especially minorities. Yet there is something distinctive about

members of religious groups which renders a republican account of hate speech especially useful to assessing their situation. More specifically, members of religious groups may often resort to hate speech in order to express and propagate their faith. For example, some traditional or orthodox religious believers (Christians and Muslims alike) justify their sometimes extreme use of language regarding issues of sexual orientation as part of their religious freedom, as the examples illustrated in the introduction show. Therefore, while much of my analysis might also apply to non-religious victims of hate speech, it acquires a special importance when the victims of hate speech are religious believers, since the latter may sometimes also find themselves in the position of perpetrators, and hate speech may in their view be central to their exercise of religious freedom. The same cannot be said, for example, about members of racial or ethnic minorities, since we do not normally speak of “freedom of race” or “freedom of ethnicity.”

There might often be a tension, therefore, between guaranteeing the non-domination of the victims of religious hate speech (who are themselves, sometimes, religious believers) and protecting the religious freedom of those religious individuals who make use of hate speech. Protecting the former, through hate speech legislation, might undermine the latter (and vice versa). Who, therefore, should be given priority in these cases?

I contend that the hate speech employed by religious citizens should be subject to the same restrictions that also apply to other citizens. There are two reasons for this claim. First, there might often be other ways for religious citizens to convey their religious message, e.g. by preaching in ways that do not make use of hate speech. Restricting hate speech, therefore, may often have little if any negative implications for their religious freedom. For example, a religion’s disapproval of homosexuality could often be conveyed without likening homosexuals with “cancer” (Anon. 2005). Similarly, disapproval of another religion could often be expressed without labelling that religion “heathen” or “Satanic” (Anon. 2014).

Second, and more importantly, in a coherent republican framework religious freedom itself should be considered an aspect of freedom as non-domination. On the one hand, as in the case of freedom of speech, non-domination does not mean non-interference. One's religious freedom, that is, could legitimately be interfered with (e.g. through hate speech laws) without such an interference being dominating (i.e. "arbitrary" or "uncontrolled"). On the other hand, and relatedly, republicans should also be concerned with the religious freedom of the victims of religious (or non-religious) hate speech who, we have seen, may often be themselves religious people (e.g. believers of a different faith). Their religious freedom (qua non-domination), that is, may be undermined by religious (or non-religious) hate speech, in the same way in which hate speech in general may undermine the freedom of speech (qua non-domination) of its victims. Republicanism, therefore, justifies restricting the religious freedom of some (conceived in liberal terms as a "negative" freedom) in order to protect a republican system where all enjoy undominated religious freedom, i.e. all exercise robust control over their religious freedom. Furthermore, even when the victims of religious hate speech are not themselves religious (e.g. non-religious homosexuals), republicans should be concerned with protecting their freedom as non-domination in all its different manifestations (e.g. sexual freedom, freedom of conscience, freedom of speech, etc.).

Conclusion

The positive conception of freedom that underlies the main theories of free speech can only partially capture what is wrong with hate speech. The republican idea of freedom as non-domination, I have claimed, offers a theoretical and normative framework that helps us to understand more fully the wrongness of hate speech, by appealing to the importance of guaranteeing a robust freedom of speech for all. Furthermore, I have argued, the hate speech used by religious citizens should be subject to the same restrictions that also apply to other

citizens' speech, in order to guarantee the undominated freedom (including religious freedom) of all citizens, including the victims of religious hate speech.

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